

HOUSE BILL NO. 473

INTRODUCED BY T. BERRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MEDICAL MARIJUANA LAWS; PROVIDING FOR THE DENIAL OF A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT OR CAREGIVER WHO HAS BEEN CONVICTED OF A FELONY DRUG OFFENSE; CLARIFYING THAT POSSESSION OF EXCESS MARIJUANA IS A CRIMINAL OFFENSE AND THAT REGISTRY IDENTIFICATION CARDS ARE REVOKED UPON CONVICTION; PROVIDING THAT THE PROTECTION OF A PHYSICIAN DOES NOT APPLY IN CASES OF NEGLIGENCE OR COLLUSION; PROVIDING THAT A REGISTRY IDENTIFICATION CARD ISSUED BY ANOTHER JURISDICTION SUBJECTS THE HOLDER TO THE TERMS, CONDITIONS, AND RESTRICTIONS OF MONTANA LAW; DIRECTING THE ADOPTION OF RULES FOR THE REVOCATION OF REGISTRY IDENTIFICATION CARDS; AND AMENDING SECTIONS 50-46-103, 50-46-201, 50-46-205, AND 50-46-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care decisions for the minor signs and submits a written statement that:

1 (a) the minor's physician has explained to that minor and to the custodial parent or legal guardian with
2 responsibility for health care decisions for the minor the potential risks and benefits of the medical use of
3 marijuana; and

4 (b) the custodial parent or legal guardian with responsibility for health care decisions for the minor:

5 (i) consents to the medical use of marijuana by the minor;

6 (ii) agrees to serve as the minor's caregiver; and

7 (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of
8 marijuana by the minor.

9 (4) The department shall issue a registry identification card to the caregiver who is named in a qualifying
10 patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying
11 patients who have named the applicant as caregiver. The department may not issue a registry identification card
12 to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive
13 reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

14 (5) (a) The department shall verify the information contained in an application or renewal submitted
15 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the
16 application or renewal.

17 (b) The department may deny an application or renewal ~~only~~ if the applicant did not provide the
18 information required pursuant to this section, the department determines that the information was falsified, or the
19 applicant is not qualified to receive a registry identification card under the provisions of this chapter. The
20 department shall deny an application or a request for renewal by an otherwise qualifying patient or caregiver who
21 has been previously convicted of a felony drug offense. Rejection of an application or renewal is considered a
22 final department action, subject to judicial review.

23 (6) The department shall issue a registry identification card within 5 days of approving an application or
24 renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
25 state:

26 (a) the name, address, and date of birth of the qualifying patient;

27 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

28 (c) the date of issuance and expiration date of the registry identification card; and

29 (d) other information that the department may specify by rule.

30 (7) A person who has been issued a registry identification card shall notify the department of any change

1 in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's
2 debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
3 department, the registry identification card is void.

4 (8) The department shall maintain a confidential list of the persons to whom the department has issued
5 registry identification cards. Individual names and other identifying information on the list must be confidential and
6 are not subject to disclosure, except to:

7 (a) authorized employees of the department as necessary to perform official duties of the department;
8 or

9 (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that
10 a person is a lawful possessor of a registry identification card.

11 (9) The department shall report annually to the legislature the number of applications for registry
12 identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating
13 medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number
14 of physicians providing written certification for qualifying patients. The department may not provide any identifying
15 information of qualifying patients, caregivers, or physicians."
16

17 **Section 2.** Section 50-46-201, MCA, is amended to read:

18 **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of**
19 **medical use.** (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant
20 to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege,
21 including but not limited to civil penalty or disciplinary action by a professional licensing board or the department
22 of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana ~~if the~~
23 ~~qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2) except~~
24 as provided in this chapter.

25 (2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana
26 plants and 1 ounce of usable marijuana each. If a qualifying patient or a qualifying patient's caregiver possesses
27 more than six marijuana plants and 1 ounce of usable marijuana each, the offending party may be arrested,
28 prosecuted, and penalized as provided in Titles 44 through 46. In addition, the offending party's registry
29 information card is immediately revoked and has no further legal force or effect.

30 (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the

1 qualifying patient or caregiver:

2 (i) is in possession of a registry identification card; and

3 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under
4 subsection (2).

5 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the
6 purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

7 (4) ~~(a) A Subject to subsection (4)(b), a~~ physician may not be arrested, prosecuted, or penalized in any
8 manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the
9 board of medical examiners or the department of labor and industry, for providing written certification for the
10 medical use of marijuana to qualifying patients.

11 (b) Subsection (4)(a) does not apply if a physician's certification for the medical use of marijuana is made
12 negligently or is made in collusion with an otherwise nonqualifying patient to avoid arrest, criminal prosecution,
13 a civil penalty, or a disciplinary action for the acquisition, possession, cultivation, manufacture, use, delivery,
14 transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana.

15 (5) An interest in or right to property that is possessed, owned, or used in connection with the medical
16 use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for
17 the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or as provided
18 in this chapter.

19 (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as
20 provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity
21 of the medical use of marijuana as permitted under this chapter.

22 (7) Possession of or application for a registry identification card does not alone constitute probable cause
23 to search the person or property of the person possessing or applying for the registry identification card or
24 otherwise subject the person or property of the person possessing or applying for the card to inspection by any
25 governmental agency, including a law enforcement agency.

26 (8) A registry identification card or its equivalent issued by another state government to permit the
27 medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical
28 use of marijuana has the same force and effect as a registry identification card issued by the department but is
29 subject to the terms, conditions, and restrictions in this chapter."

1 **Section 3.** Section 50-46-205, MCA, is amended to read:

2 **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:

3 (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or
4 motorboat while under the influence of marijuana; ~~or~~

5 (b) the smoking of marijuana:

6 (i) in a school bus or other form of public transportation;

7 (ii) on any school grounds;

8 (iii) in any correctional facility; or

9 (iv) at any public park, public beach, public recreation center, or youth center;

10 (c) the acquisition, possession, cultivation, or manufacture of marijuana by a qualifying patient or
11 caregiver in excess of the amounts provided for in 50-46-201(2); or

12 (d) the delivery, transfer, transportation, or distribution of marijuana or paraphernalia relating to the
13 consumption of marijuana by a qualifying patient or caregiver to one who is not a qualifying patient or caregiver
14 registered with the department.

15 (2) Nothing in this chapter may be construed to require:

16 (a) a government medical assistance program or private health insurer to reimburse a person for costs
17 associated with the medical use of marijuana; or

18 (b) an employer to accommodate the medical use of marijuana in any workplace.

19 (3) If a qualifying patient or caregiver is convicted of a felony drug offense, the party's registry
20 identification card is immediately revoked and has no further legal force or effect."

21
22 **Section 4.** Section 50-46-210, MCA, is amended to read:

23 **"50-46-210. Rulemaking -- fees.** The department shall adopt rules necessary for the implementation
24 and administration of this chapter. The rules must address the manner in which the department will consider
25 application for and renewals of registry identification cards for qualifying patients and caregivers and the
26 revocation of registry identification cards. The department's rules must establish application and renewal fees that
27 generate revenue sufficient to offset all expenses of implementing and administering this chapter. The department
28 may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income."

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